LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
AUG 5 1963
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. [redacted] 188

SAYLES FINISHING PLANTS, INC., *Appellant,*

v.

MARTIN J. TOOMEY, TAX ASSESSOR OF THE TOWN OF EAST PROVIDENCE, *Appellee*

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND

MOTION TO DISMISS

SARKIS TATARIAN,
City Solicitor of the City
of East Providence,
East Providence, Rhode Island.

CHARLES S. RHYNE,
ALFRED J. TIGHE, JR.,
Rhyne & Rhyne,
400 Hill Building,
Washington 6, D. C.,
Attorneys for Appellee.

INDEX

	Page
Motion to Dismiss	1
Question Presented	1
Statement of the Case	2
Argument	6
No Substantial Federal Question Is Raised by This Appeal	6
1. The Fourteenth Amendment Is Not Violated When Due Process Safeguards Are Provided But Not Followed	6
2. Construction of State Statute Respecting Remedies of an Aggrieved Taxpayer and Jurisdiction of State Court Are Binding on This Court	10
Conclusion	14
Appendix A	15

AUTHORITIES

Bishop v. *The Tax Assessors of Newport*, 47 R.I. 351, 133 Atl. 342 (1926)	11
Black v. *Geissler*, 58 Okla. 335, 159 Pac. 1124 (1916)	12
Brinkerhoff-Faris Trust and Savings Co. v. *Hill*, 281 U.S. 673	12
Burrill v. *Locomobile Co.*, 258 U.S. 34	12
Central of Georgia Railway Co. v. *Wright*, 207 U.S. 127	12, 13
Clarke v. *Tinkham*, 20 R.I. 790, 38 Atl. 926 (1893)	10
Coventry Co. v. *Assessors of Taxes*, 16 R.I. 240, 14 Atl. 877 (1888)	8, 10
Ewing v. *Tax Assessors of the Town of Jamestown*, —— R.I. ——, 176 A. 2d 69 (1961)	10
First National Bank v. *Board of County Comrs.*, 264 U.S. 450	10
Hagar v. *Reclamation District No. 108*, 111 U.S. 701	6
John L. Whiting-J. J. Adams Co. v. *Burrill*, 258 U.S. 39	12

Page

Kentucky Railroad Tax Cases, 115 U.S. 321 7
Kersh Lake Drainage District v. *Johnson*, 309 U.S. 485 12
King v. *Mullins*, 171 U.S. 404 ..... 6, 7
Kirtland v. *Hotchkiss*, 100 U.S. 491 6
Lander v. *Mercantile National Bank*, 186 U.S. 458 7
Lent v. *Tillson*, 140 U.S. 316 6
McGregor v. *Hogan*, 263 U.S. 234 6
Merchants Cold Storage & Warehouse Co. v. *Clarke*, 43 R.I. 37, 110 Atl. 380 (1920) 10
Michigan Cent. Railroad Co. v. *Powers*, 201 U.S. 245 ..... 6, 14
Narragansett Pier Co. v. *Assessors or Taxes of the District of Narragansett*, 17 R.I. 452, 23 Atl. 11 (1891) 10
In re Newport Reading Room, 21 R.I. 440, 44 Atl. 511 (1899) 2, 10
Ogden City v. *Armstrong*, 168 U.S. 224 ..... 11, 13, 14
Pittsburgh C. C. & L. R. Co. v. *Backus*, 154 U.S. 421 7
Quimby v. *Wood*, 19 R.I. 571, 35 Atl. 149 (1896) 10
Stone v. *Norris*, 40 R.I. 477, 101 Atl. 428 (1917) 10, 11
Tripp v. *Torrey*, 17 R.I. 359, 22 Atl. 278 (1891) 10

United States Constitution:

Fourteenth Amendment 1, 6, 7, 8, 9, 11, 12, 13

Rhode Island General Laws, 1956:

§ 44-4-3 5
§ 44-5-15 ..... 3, 4, 7, 11
§ 44-5-16 ..... 3, 4, 8, 13
§ 44-5-26 4
§ 44-5-30 ..... 3, 4

Rhode Island Acts and Resolves, January Session:

1957, ch. 33 2
1958, ch. 8 2
1949, ch. 2296 ..... 2, 3, 7, 9, 13, 15

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 1160

SAYLES FINISHING PLANTS, INC., *Appellant*,

v.

MARTIN J. TOOMEY, TAX ASSESSOR OF THE TOWN OF EAST PROVIDENCE, *Appellee*

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND

MOTION TO DISMISS

Appellee, Martin J. Toomey, Tax Assessor of the Town of East Providence moves to dismiss the appeal herein pursuant to Rule 16 of the Revised Rules of this Court, upon the ground that no substantial Federal question is presented.

Question Presented

Is an aggrieved taxpayer who elected to proceed under one of the state statutory remedies available to him to contest a tax assessment deprived of due process of law under the Constitution of the United States when the State Supreme Court in interpreting state law decides that his

failure to comply with the procedure prescribed by the elected remedy deprived the Court of jurisdiction?

Statement of the Case

This appeal is from an action for relief from an alleged overassessment of the Appellants real estate for taxes assessed December 31, 1956. Appellants have two procedures whereby they can question an overassessment. Appellants did not comply with the procedure they chose. Appellants now contend that their failure which deprived Rhode Island Courts of jurisdiction results in a denial of due process of law.

The tax assessment procedure for towns in Rhode Island is established by state statute. (Rhode Island General Laws, 1956, Title 44.) Pursuant to the prescribed procedure, Appellee Toomey, Tax Assessor of the Town of East Providence,[1] published notice advising of an assessors meeting and requiring every person and body corporate liable to taxation to bring in and file a true and exact account of all ratable[2] estate owned or possessed by him or it in the town as of noon, December 31, 1956, the prescribed assessment date for town valuations each year.

The Appellant, a Rhode Island Corporation, gave notice by letter of its intention to file a true and exact account of its ratable property pursuant to §§44-5-15 et seq., Rhode Island General Laws.[3] Under the terms of this statute, the

---

[1] The Town of East Providence became a City on December 1, 1958. R.I. Acts and Resolves, January 1957, ch. 33 and Id. 1958, ch. 8.

[2] The word "ratable" as used in this section is not equivalent to the word "taxable". *In re Newport Reading Room*, 21 R.I. 440, 44 Atl. 511 (1899).

[3] The Appellant taxpayer under the terms of R.I. Acts and Resolves, January 1949, Chapter 2296 could also have appealed to the East Providence Board of Tax Review which Board has the authority to change any assessment. This is an alternative remedy. See Appendix A. Pursuant

taxpayer must (1) file a written notice of intention to bring in an account (Id. §§44-5-15), (2) bring in an account between April 1st and 15th (Ibid.), and (3) make oath before some notary public that the account contains to the best of his knowledge and belief, a true and full account and valuation of all the ratable estate owned or possessed by him [4] (Id. §44-5-16). Section 44-5-30 of the said statute provides that if, on trial, it shall appear that the taxpayer has omitted any property from his account, the assessor shall have judgment and costs for the full amount of the assessment.

Thereafter the Appellant filed a timely sworn account purporting to be a full, true and exact account of all its ratable property located in East Providence. (Exhibit 3). The total value placed by Appellant on its land was $154,420,00 with $844,995.00 for buildings and improvements and $735,500.00 for personal property. The appellee assessed said land and improvements at the substantially higher figure, i.e. land and improvements $1,837,100.00, personal property $742,120.00. This was the same assessment as for the year 1956 and several years prior thereto. It is to be noted that the account filed by Appellee and sworn to be a full true and exact account of all the ratable estate (Exhibit 3) does not include Omega Pond water rights and privileges, the land under said pond nor improvements on Lots 73 and 74 on Plat No. 35 of the Assessor of Taxes.

Appellant paid the assessed tax under protest and filed a petition in the Superior Court for relief from alleged overassessment of its ratable real property. This statutory

---

to Section 2 of Chapter 2296 the Town Council appointed three members to the Board of Tax Review, and said Board has been continuously in existence from 1950 to the present time.

[4] The taxpayer is not restricted to the statutory requirement of furnishing an itemized account of all of its ratable property under the Board of Tax Review procedure. Ibid.

remedy is expressly available to a taxpayer who has made an account of his ratable property and sworn that it is a true and full account and valuation of all the ratable estate owned or possessed by him (R.I. Gen Laws §§44-5-26, 44-5-15, 44-5-16). This statute provides that if it shall appear that the taxpayer has omitted any property from his account the assessor shall have judgment and costs for the amount of the assessment (§44-5-30).

A trial was held consuming some fifty-seven days during which more than 4,000 pages of testimony were compiled, numerous exhibits received and the premises were viewed by the trial justice.

At trial the Appellant stated that it was not contesting the assessment against its personal property or the land values but was only contesting the assessment on improvements on a portion of its real estate, the site of the Glenlyon Print Works on the east bank of the Seekonk River near Omega Pond and identified as Lots 73 and 74 on Plat No. 35 of the Assessor of Taxes which real estate after the date of assessment was sold to Almac's Inc. subject to the Appellant's "rights to take water from and to flow Omega Pond."[5] The Appellant at no time amended its petition to conform to the proof offered however and it is also to be noted that on assessment date the plant was in full operation in the processing of cloth and 23 months later the property was sold to Almac's, Inc., to wit, October 14, 1958 (P's Exhibit 36 id. Tr. I. 424) at which time the plant had been dismantled and stripped of all its machinery and equipment.

Improvements upon this property were assessed at $1,614,355.00 whereas the Appellee claimed a valuation

---

[5] There is in the Record a deed from Appellant to Washburn Wire Company dated February 10, 1960 which specifically conveys the water rights. Although the federal stamps indicate that the purchase price was in excess of $250,000.00, it is not possible to determine the consideration paid for such rights since the conveyance includes other parcels of realty.

of $775,800.00. However, it is to be noted that ratable property was considered by the assessor in fixing the assessment which was not mentioned, listed or described by the taxpayer in his sworn account. (Tr. XI, pp. 4217-4218, Exhibit EE) Uncontradicted testimony shows that the Appellant had failed to include in its account of ratable estate, sworn to be a true and full account and valuation, any valuation of the Omega Pond water rights and land under said pond, the quantity and value of steam pipes and the value of the dynamos, boilers, main switches and various electrical fixtures which were all attached to the premises, valuable to the manufacturing process of Appellant and considered as realty.[6] It may also be noted that the taxpayer derived annual income from said property and later sold same.[7] The Superior Court found the Appellant's account inadequate and defective inasmuch as the statute requires an account of all of the taxpayers ratable property whether it is taxable or not.

The Court then dismissed the petition on the grounds that it lacked jurisdiction to grant relief because the Appellant had not in its account properly complied with the statutory requirements.

Appellant's exceptions were overruled by the Supreme Court of Rhode Island in a comprehensive opinion and the

---

[6] R.I. Gen. Laws § 44-4-3 provides: *Fixtures declared to be real estate.* The main wheels, steam engines, dynamos, boilers, and shafts, whether upright or horizontal, drums, pulleys, and wheels attached to any real estate for operating machinery, and all steam pipes, gas pipes, water pipes, ammonia pipes, air pipes, gas fixtures, electric fixtures, and water fixtures attached to, and all kettles set and used in any manufacturing establishment, are declared to be real estate when owned by the owners of the real estate to which they are attached.

[7] The land under the pond and the water rights appurtenant thereto were conveyed many times by the former owners with considerable value contrary to Appellant's statement, Jurisdictional Statement 9. See testimony of Mr. Singsen and respondent's Exhibit CC (Tr. X 3847), Exhibit DD and Testimony of Mr. Wendell Stimpson Brown (Ex. EE, Tr. XI 4031-4033).

case was remitted to the Superior Court for judgment pursuant to Rhode Island procedure. (188 A. 2d 91 (R.I. 1963)).

ARGUMENT

No Substantial Federal Question Is Raised by This Appeal

1. *The Fourteenth Amendment Is Not Violated When Due Process Safeguards Are Provided But Not Followed*

This Court has said that it may be regarded as established doctrine that so long as the State, by its system of taxation, does not entrench upon the legitimate authority of the Union, or violate any right recognized or secured to the citizen by the Constitution of the United States, this court, as between the citizen and his state, can afford no relief against state taxation, however unjust, oppressive or onerous. *Kirtland* v. *Hotchkiss*, 100 U.S. 491.

Due process of law as applied to proceedings for the collection of public revenue by taxation is more summary in character and necessarily less formal than in cases of a judicial character. *King* v. *Mullins*, 171 U.S. 404; *Lent* v. *Tillson*, 140 U.S. 316. Requirements of due process of law in tax proceedings have been held to be fully observed if the taxpayer is given an opportunity to contest the validity of the tax at any time before it is made final, whether the proceedings for review take place before a board having a quasi-judicial character, or before a tribunal provided by the state for the purpose of determining such questions. *McGregor* v. *Hogan*, 263 U.S. 234; *Hagar* v. *Reclamation District No. 108*, 111 U.S. 701; *Michigan Cent. Railroad Co.* v. *Powers*, 201 U.S. 245.

A system established by West Virginia under which lands liable to taxation were forfeited to the state by reason of the owner not having them placed on the proper

land books for taxation has been held not inconsistent with the due process of law required by the Constitution of the United States. *King* v. *Mullins*, 171 U.S. 404. This Court has repeatedly held that when an assessment is made at a public hearing of the board of assessors, at a time and place fixed by law, at which persons subject to taxation have a right to be present and to be heard, this is all that can be reasonably asked, even if no right of review is given before a court or any other tribunal. *Lander* v. *Mercantile National Bank*, 186 U.S. 458; *Pittsburgh C. C. & St. L. R. Co.* v. *Backus*, 154 U.S. 421; *Kentucky Railroad Tax Cases*, 115 U.S. 321.

Complete due process safeguards are provided a taxpayer by the statutes of Rhode Island. Under the procedure, the tax assessor, Apellee Toomey, published notice advising of an assessors meeting for the purpose of assessing town valuations. (R.I. Gen. Laws §44-5-15). Statutes then provide an aggrieved taxpayer a remedy both before the Tax Board of Review of East Providence (R.I. Acts and Resolves, January 1949, Ch. 2296) and the Superior Court (R.I. Gen. Laws §§44-5-15 et seq.). (See Jurisdictional Statement A9).

It is clear that two statutory procedures (each adequate) for appeal from an assessment are thus provided. One statute, R.I. Acts and Resolves, January 1949, Ch. 2296, provides that the East Providence Board of Tax Assessment Review shall receive and consider appeals from property owners regarding the amounts of assessment as determined by the town assessor provided such appeals are properly filed with it within sixty days after the annual publication of a new tax assessment roll. Under this procedure, a taxpayer is not restricted to the statutory requirement of furnishing an itemized account of all of its ratable

property. Appellant in no way attempted to avail himself of this remedy.

Appellant elected to proceed, however, under the provisions of the R. I. Gen. Laws §44-5-16, which required that it file (Petitioner's Exhibit 3) a "true and full account and valuation of all the ratable estate owned or possessed by it". The appellant did file an account (Exhibit 3) purporting to be a true and exact account of all the ratable estate owned or possessed by it in said Town (now City) of East Providence as of December 31, 1956, which account was duly verified under oath as provided by law. However, uncontradicted testimony at the trial shows that the account, Exhibit 3, failed to include any valuation of the Omega Pond water rights and land under said pond, the quantity and value of underground water mains and pipes, quantity and value of steam pipes and the value of the dynamos, boilers, main switches and various electrical fixtures which were all attached to the premises, and indeed was so lacking in sufficiency as to be inadequate and thus defective.

The Trial Court so held. The Supreme Court affirmed, holding that the Court was without jurisdiction and petitioner was not entitled to the relief it sought because the affidavit filed was too general and did not constitute "a true and exact account of all the ratable estate owned or possessed by him or it" and that it failed to include petitioner's "right to flow" which was found to be ratable property within the definition of that term as interpreted by the Courts of Rhode Island. *Coventry Co.* v. *Assessors of Taxes,* 16 R.I. 240, 14 Atl. 877 (1888).

In so holding, though the subject of due process had not been briefed, the Supreme Court of Rhode Island stated:

> "Here the legislature has provided that respondent was required to hold hearings at a time or times sub-

sequent to the effective day of assessment; that petitioner should receive notice in advance as to the time and place of such hearings; and that by making a full, true and exact account of its ratable property, describing each parcel of its real and personal property and placing a value thereon, the taxpayer would be entitled to a judicial review of the tax eventually assessed if in the opinion of the taxpayer such assessment was excessive.

"Clearly the legislature intended the account, made under oath, to constitute a taxpayer's representation as to the character, extent and particulars of its ratable property at the hearing afforded by the statute. Moreover, the general assembly has provided a taxpayer with more than three and one-half months in which to prepare an account from his or its records. The very purpose of providing for such an account is to afford the taxpayer protection against an overassessment. It is to be noted that by the very terms of the statute a taxpayer is entitled to a judicial review of an assessment which he claims to be illegal, as distinguished from excessive, without the prior requirement of making an account." (188 A. 2d 91, 96)

Clearly, due process is available in such a proceeding provided the prescribed procedure is followed, and this remedy is in addition to the remedy available under R.I. Acts & Resolves, January 1949, Ch. 2296. Appellants own failure cannot be made into a denial of due process by Respondent.

2. *Construction of State Statute Respecting Remedies of an Aggrieved Taxpayer and Jurisdiction of State Court Are Binding on This Court.*

While this Court in passing upon the validity of a State tax under Federal constitutional provisions is not limited by the characterization of the tax by the state, it has long held itself bound by a construction by a state court of a state statute with respect to the remedies of a taxpayer for relief from an excessive assessment. *First National Bank* v. *Board of County Comrs.*, 264 U.S. 450.

The purpose of requiring a true and exact account describing and specifying the value of every parcel of a taxpayer's ratable estate is to aid the assessors in performing their duty to make a proper assessment. *Ewing* v. *Tax Assessors of the Town of Jamestown*, —— R.I. ——, 176 A. 2d 69 (1961). Contrary to the statements by Appellant, (See e. g. Jurisdictional Statement 3, 4, 14, 21, 23) the Supreme Court of Rhode Island in a long line of cases from an early date has followed without exception the proposition that any taxpayer who fails to file an account of *all of his ratable property* and otherwise comply with the statute is not entitled to any relief under the provision of Section 44-5-26. *Coventry Company* v. *The Assessors of Taxes*, 16 R.I. 240, 14 Atl. 877 (1888); *Tripp* v. *Torrey*, 17 R.I. 359, 22 Atl. 278 (1891); *Narragansett Pier Co.* v. *Assessors of Taxes of the District of Narragansett*, 17 R.I. 452, 453, 23 Atl. 11 (1891); *Quimby* v. *Wood*, 19 R.I. 571, 35 Atl. 149 (1896); *Clarke* v. *Tinkham*, 20 R.I. 790, 38 Atl. 926 (1893); *In re Newport Reading Room*, 21 R.I. 440, 44 Atl. 511 (1899); *Stone* v. *Norris*, 40 R.I. 477, 101 Atl. 428 (1917); *Merchants Cold Storage & Warehouse Co.* v. *Clarke*, 43 R.I. 37, 110 Atl. 380 (1920); and *Ewing* v. *Tax Assessors of the Town of Jamestown*, —— R.I. ——, 176 A.

2d 69. As stated by the Rhode Island Supreme Court in *Bishop* v. *The Tax Assessors of Newport*, 47 R.I. 351, 354, 133 Atl. 342, 343 (1926) discussing the statutory provisions and the cases supporting same:

> "This provision in regard to making tax returns [§44-5-15] is directory not mandatory, as the assessors are given no authority to compel a disclosure. *Stone* v. *Norris*, 40 R.I. 477, 101A. 428. The duty of the assessors, however, is the same whether a return is or is not made, as section 3 provides that all property liable to taxation shall be assessed at its full and fair cash value. The assessors are not bound by the return, but in all cases are required to exercise their own judgment and assess the property at its full and fair cash value (C. 60, s. 14). As in the case at bar no return as required by the statute was made, the executors cannot secure relief by petition against the assessors, as the foundation of that remedy and the basis of judgment on such a petition is the statutory return filed with the assessors."

The provisions of the statute clearly set forth the method and manner by which a taxpayer may protect himself against any overassessment. This is realistic in the light of the approximately 2,000 tax appeals filed annually in East Providence and provides abundant due process safeguards. Appellants contentions as to retroactive deprivation of any hearing are clearly refuted by the long line of decisions by the Rhode Island Supreme Court and the Rhode Island statutes. As stated in *Ogden City* v. *Armstrong*, 168 U.S. 224, 239, for a merely irregular assessment the statutory remedy is also the exclusive remedy. It is supposed to be adequate to all the requirements of justice and it is a person's own folly if he fails to avail

himself of it. Appellant failed to conform to said requirements.

Since statutory authority is necessary for permitting refund or allowing recovery of wrongful taxes voluntarily paid, if such a right is granted to an aggrieved taxpayer, and a remedy is provided, the right must be exercised in the manner provided by the statute and the remedy sought in like manner. *Burrill* v. *Locomobile Co.*, 258 U.S. 34; *John L. Whiting-J. J. Adams Co.* v. *Burrill*, 258 U.S. 39. As stated by the Supreme Court of Alabama, *Black* v. *Geissler*, 58 Okla. 335, 159 Pac. 1124, 1127 (1916), "The Legislature may prescribe the form of remedy to be pursued in such cases, and may change the same, provided that the aggrieved taxpayer is left an effectual remedy or one is provided for him, which is all that is necessary, and when such remedy is provided same is exclusive".

In this case the Supreme Court of Rhode Island interpreting state law and the jurisdiction of a state court stated as it has consistently held since 1888, that a taxpayer who failed to comply with the statutory conditions was not entitled to the relief afforded by the said statute.

A determination by the state's highest court of the jurisdiction of a state court is binding on the Supreme Court of the United States, *Kersh Lake Drainage Dist.* v. *Johnson*, 309 U.S. 485.

The cases of *Brinkerhoff-Faris Co.* v. *Hill*, 281 U.S. 673 and *Central of Georgia Ry.* v. *Wright*, 207 U.S. 127, relied upon by Appellant are clearly not applicable in this case.

In the *Brinkerhoff* case, involving an alleged intentional and systematic discrimination in assessments, this Court held that the Missouri Court in effect deprived the plaintiff of property without at any time affording an opportunity to be heard. The state court had refused to hear the complaint and denied relief not because of lack of power

or demerit but because the plaintiff did not first seek an administrative remedy. This was a remedy which, in fact, was never available as the Court had previously held that the administrative agency lacked power to receive applications for relief from discrimination in tax assessments. This is clearly not the situation here where a remedy was available if properly pursued by the Appellant either under the terms of R.I. Gen. Law §§ 44-5-16 or R.I. Acts and Resolves, January 1949, Ch. 2296.

In the *Central of Georgia Railroad case*, the question presented was whether due process was afforded where a taxpayer upon reasonable grounds withholds property from tax returns with an honest belief that it was not taxable, and the assessing officer proceeded to assess the omitted property without affording an opportunity to the taxpayer to be heard upon the validity of the tax or the amount of the tax assessment, either in tax proceedings or afterward upon a suit to collect taxes or by independent suit to enjoin their collection. The question of the taxability of the stock shares was a matter of litigation in the Federal Courts and the record disclosed that for many years this class of property was not regarded as taxable in Georgia and was not returned for taxation. This Court held that the Georgia system which required that the taxpayer return all his property whether its liability is fairly contestable or not under pain of an *ex parte* valuation against which there was no relief in the tax proceedings, or in the courts, except where fraud or corruption can be shown in the assessing officer did not afford due process. Such is certainly not the case here where adequate remedy—in fact two remedies—was statutorily provided if the procedural requirements were met. As stated in *Ogden City* v. *Armstrong*, "Undoubtedly, for merely irregular assessments, where the authorities have jurisdiction to act, the statutory remedy is also the exclusive remedy."

168 U.S. 224, 239; see also *Michigan Cent. Railroad Co.* v. *Powers*, 201 U.S. 245.

Conclusion

For the reasons given above, the appeal should be dismissed as there was no denial of due process and no substantial federal question is presented herein.

Respectfully submitted,

SARKIS TATARIAN,
City Solicitor of the City
of East Providence,
East Providence, Rhode Island.

CHARLES S. RHYNE,
ALFRED J. TIGHE, JR.,
Rhyne & Rhyne,
400 Hill Building,
Washington 6, D. C.,
Attorneys for Appellee.

APPENDIX A

Rhode Island Acts and Resolves, January 1949, Chapter 2296

SECTION 1. The town council of the town of East Providence shall, at its first meeting in January, 1950, appoint one tax assessor to hold office until the first Monday in January, 1952, and until his successor is appointed and qualified.

At the first meeting of said council in January, 1952, and biennially thereafter, the town council shall appoint a tax assessor to hold office for the term of two years and until his successor is appointed and qualified. The tax assessor shall receive such annual salary in full for all his services as said officer as may be fixed from time to time by the town council. Any vacancy in said office shall be filled in the same manner for the remainder of the term. The tax assessor shall have and exercise all the powers and perform all the duties which are now or may hereafter be vested in the assessors of taxes of the cities and towns of the state of Rhode Island. The assessors of taxes now holding office shall continue to hold their offices and exercise all said powers and duties until a tax assessor is appointed and qualified pursuant to this section.

SEC. 2. There shall be a board of tax review for the town of East Providence consisting of 3 members who shall be appointed by the town council and no more than 2 of whom shall be members of the same political party. Forthwith upon the initial appointment of the tax assessor as hereinbefore set forth in section 1, the then existing members of the board of tax assessors whose terms of office are thereby terminated shall be appointed by the town council as members of said board of tax review and their terms of office upon this initial appointment shall be measured by their unexpired and terminated terms of office as tax assessors. At the first meeting of the council in December, 1952, and at the first meeting of said council in December, biennially thereafter, the said council shall appoint one member of

the board of tax review for the term of 6 years and until his successor is appointed.

SEC. 3. Said board of tax assessment review shall receive and consider appeals from property owners regarding the amounts of assessments as determined by the town assessor, provided such appeals are properly filed with it within 60 days after the annual publication of a new tax assessment roll. Said board shall have authority to adopt rules and regulations as to the procedure in presenting, considering and disposing of appeals and may hold hearings, administer oaths and receive testimony and exhibits. It shall have the power to change any assessments so appealed and reviewed, but only after the town assessor has been given an opportunity to appear before it or otherwise present his case, provided that this provision shall in no way alter legal requirements existing on the effective date of this act relative to town council review of abatements. Hearings of the board of tax assessment review shall be open to the public. Nothing herein contained shall be construed in any way to limit or extend the right of a taxpayer to apply to the superior court in accordance with the provisions of chapter 31 of the general laws, as amended, or any other law thereto appertaining, and all amendments and additions to such law or laws for relief from the assessment as originally made by the town assessor.

SEC. 4. The members of said board shall be selected upon the basis of their knowledge of the subject of property taxation and real estate values and shall at the time of their appointment have been residents of the town for at least 5 years immediately preceding and shall continue as residents during their terms of office. If a member of such board shall cease to be a resident, his office shall thereby become vacant. No member of said board shall hold any other public office except that of notary public or member of the national guard or naval or military reserve. A majority of the members of said board shall constitute a quorum. The members of said board at their first meeting shall elect one of their number as chairman and thereafter shall elect a chairman upon appointment of any new member for a full

term whenever the office may become vacant. The members of said board shall receive such compensation as shall be fixed from time to time by the town council.

SEC. 5. This act shall take effect upon its passage and thereupon section 1 of chapter 388 of the public laws, 1896, as amended, and all other acts and parts of acts inconsistent herewith, in so far as they pertain to the town of East Providence, are hereby repealed.